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October 19, 2010

Chief Justice Barbara Madsen
Washington Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

Re: *Seattle Times v. Serko*, 84691-0

Dear Madam Chief Justice:

I write in response to the letter to the Court dated October 18, 2010 submitted by counsel for Respondent Darcus Allen. The supposed clarification offered by Respondent cannot be reconciled with the record below, and unnecessarily confuses the legislative history of the investigative records exemption to the Public Records Act ("PRA").

Respondent asserts that a comment made by Judge Serko at the June 7 hearing demonstrates that she relied on the Public Record Act's investigative records exemption as the basis for denying Petitioners access to the police records at issue. Specifically, Respondent claims that when Judge Serko stated that "my reference to 540 [RCW 42.56.540, the PRA's injunction provision] should also be a reference to [RCW 42.56.]210," what she really meant to say was that "my reference to RCW 42.56.540 should also have been a reference to RCW 42.56.240(1)," the PRA's investigative records exemption.

The meaning of Judge Serko's verbal reference to Section 210 is, at best, ambiguous. But the reading suggested by Respondent – that Judge Serko ultimately rested her decision on the investigative records exemption – cannot be squared with the record below. Judge Serko's May 20 Order, at pp. 4-5, discussed the investigative records exemption but ultimately concluded that it was unnecessary to rely on it "[b]ecause the Court relies on the exemption in RCW 42.56.540 and the reasoning below." More significant for present purposes, Judge Serko recognized that (1) the court could *not* make a "generic determination" – i.e., a blanket finding – that the investigation records exemption applied in this case, and (2) the court had before it no "factual explanation" that would justify applying the exemption at all. May 20 Order at 5. Judge Serko made no additional findings at the June 7 hearing. Thus, her offhand verbal comment cannot be read to mean that she was determining that withholding any of the records was in fact "essential to effective law enforcement." RCW 42.56.240(1).

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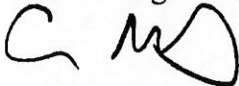
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In addition, Respondent's discussion of the recodification of the Public Records Act is erroneous. When the public records statute was recodified in 2006, the investigative records exemption was moved, verbatim, from RCW 42.17.310(1)(d) to RCW 42.56.240(1). *See* Laws 2005, ch. 274 § 402 (deleting former 42.17.310(d)) *and* § 404 (creating the provision that became RCW 42.56.240(1)). The exemption has never been part of "Section 210" of any statutory provision. Respondent's convoluted attempt to argue otherwise is incorrect, and would unnecessarily confuse the exemption's straightforward history.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to be 'E M Stahl', written over the printed name.

Eric M. Stahl

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From: Kruger, Christine [mailto:ChristineKruger@DWT.COM] **On Behalf Of** Stahl, Eric

Sent: Tuesday, October 19, 2010 2:23 PM

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Subject: Seattle Times v. Serko; No. 84691 -

Attached please find Seattle Times Company's response to the October 18, 2010 letter to the Court, submitted by counsel for Respondent Darcus Allen.

All counsel have agreed to be served by email.

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The attorney filing this letter response is:

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